

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK CIARAMELLA, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

-v-

HOWARD ZUCKER, as Commissioner of the
Department of Health,

Defendants.

CIVIL ACTION NO.: 18 Civ. 6945 (MKV) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

Before the Court are letter-motions concerning: (1) Defendant's request for an order allowing him to serve on Plaintiffs contention interrogatories pursuant to S.D.N.Y. Local Rule 33.3(c) (ECF No. 184); (2) Plaintiffs' request for an order compelling the production of documents withheld based on the deliberative process privilege (ECF No. 190); (3) the parties' dispute regarding the twelve topics in Plaintiffs' Rule 30(b)(6) notice to Defendant (the "Topics") (ECF No. 195); (4) the parties' dispute regarding whether Plaintiffs are required to produce certain expert documents and communications (the "Expert Witnesses") (ECF No. 207); (5) Defendant's requests for an extension of time to complete expert discovery (ECF Nos. 200, 209); and (6) Defendant's application for an extension of the deadline for dispositive motion practice concerning Plaintiff Christopher Russo (ECF No. 211).

Pursuant to the discovery conference held yesterday, May 27, 2021, (the "May 27 Conference") the Court orders as follows:

1. The parties shall order the transcript of the May 27 Conference (the "Transcript").

2. Defendant's request for an order permitting him to file contention interrogatories is now moot. Accordingly, this application is DENIED.
3. Defendant indicated his intent to produce to Plaintiffs the documents withheld on the basis of deliberative process, except for 84 unique documents, and duplicates of same (the "Remaining Withheld Documents"). By **Thursday, June 10, 2021**, Defendant shall file:
 - a. an updated privilege log addressing the basis for withholding the Remaining Withheld Documents ("Updated Privilege Log");
 - b. an affidavit explaining the applicability of the deliberative process privilege as the basis for withholding the Remaining Withheld Documents (the "Affidavit"); and
 - c. a sample of approximately 20 documents representative of the Remaining Withheld Documents (the "Sample"). The parties shall meet and confer to determine which documents from the Remaining Withheld Documents shall be included among the Sample.
 - d. The parties shall provide a copy of items (3)(a)–(c) to the Court by joint email to Cave_nysdchambers@nysd.uscourts.gov.
 - e. The Court will review the Updated Privilege Log, Affidavit, and Sample and schedule a conference and/or issue an order concerning the Remaining Withheld Documents in due course.
4. The parties are referred to the Transcript for the Court's rulings as to the amended language of the Topics.
5. In accordance with the Court's instructions during the May 27 Conference, Plaintiffs shall promptly produce to Defendant the additional expert documents and communications discoverable pursuant to Fed. R. Civ. P. 26(b)(4)(C)(ii).

6. Plaintiff Christopher Russo shall promptly provide responses to Defendant's written deposition questions ("Russo's Responses") consistent with the Stipulation to Written Depositions of Named Plaintiffs (the "Stipulation" (ECF No. 189)). (See ECF No. 211).
7. The parties shall meet and confer and by **Friday, June 4, 2021**, submit a Joint Letter proposing a schedule for the completion of: (a) Plaintiffs' production of the expert documents and communications required by paragraph (5) supra; (b) the resumption and completion of the depositions of the Expert Witnesses; (c) the completion of the deposition(s) of Defendant's Rule 30(b)(6) witness(es); and (d) Russo's Responses. The parties' Joint Letter Proposal shall also indicate whether the parties request a further discovery status conference with Judge Cave and/or a Settlement Conference, and if so, during which week(s) the parties request that such conferences be scheduled.

The Clerk of Court is respectfully directed to close ECF Nos. 184, 190, 195, 200, 207 and 209.

Dated: New York, New York
May 28, 2021

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge